it will deal with them as concisely as possible and in the same order.

As to the first argument, there appears to be abundant authority for the proposition that there can be no estoppel where, as in this case, a transaction is declared by statute to be void.

As to the second argument, I do not think that it is possible, in law, to ratify a void transaction, especially one that is void by statute.

As to the third argument, I might have attached some weight to it had not Mr. Woods himself expressly admitted, early on in this case, that the plaintiff and the first defendant Kehar Singh are different persons though related by the fraternal tie. True it is that he limited that admission to this case and for the purposes of this case only; but we are still dealing with this case, and I cannot regard Mr. Woods otherwise than as bound by the terms of his own express admission.

As to the fourth argument, if A. buys lands and has them transferred to B., and then procures B.'s registration as the proprietor thereof under the Land Code; to whom do such lands belong? According to the Land Code they belong to B., and he has an indefeasible title thereto unless such registration was procured by means of fraud, or misrepresentation or a void or insufficient instrument. It is not suggested that the original registration of the plaintiff as the proprietor of these lands was obtained by any such means, and I therefore cannot see that it matters one kupang whether he was the first defendant's nominee or not.

For these reasons I am of opinion that this appeal should be allowed. We cannot give the plaintiff the relief which he asks for in his statement of claim, because the lands in question have been sold during the pendency of this appeal at the instance of the second defendant Bahadur Singh, and in execution of a decree in his favour against the first defendant. We can however, take notice of that event; and since the plaintiff is willing, in order to shorten litigation, to accept the net proceeds of sale of these lands in lieu of the lands themselves, I myself would give judgment in his faovur for that amount, which I understand is $3,520, against the second defendant. As my learned brethren, however, have arrived at the conclusion that the appellant is not entitled to any damages, no useful purpose will be served by adding an expression of my views as to the proper order to be made in regard to the costs of this appeal.

Appeal dismissed with costs.

[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

September 10, 1937.

KATHIGASU .....**Appellant**

v.

BACHAN SINGH.....**Respondent**

[PERAK MAGISTRATE'S CIVIL APPEAL No. 23 of 1937]

Bills of Sale Enactment (Cap. 57), Section 11 (b)—Meaning of "Summons."—Procedure for Seizure and sale—Civil Procedure Code (Cap. 7) —Originating Summons—Jurisdiction.

The Civil Procedure Code (Cap. 7) applies to proceedings for the seizure and sale of property scheduled to a Bill of Sale given by way of security.

The word "summons" in section 11 (b) of the Bills of Sale Enactment (Cap. 57) means an originating summons.

The Court of a Magistrate has no jurisdiction to entertain any application under section 11 (b) of the Bills of Sale Enactment.

B. K. Das for appellant.

J. Dunford Wood for the respondent.

AITKEN, J.—I entertain no doubt that the Civil Procedure Code does apply to proceedings for the seizure and sale of property scheduled to a Bill of Sale given by way of security. Assuming that I am right on that point then the word "Summons" in section 11 (b) of the Bills of Sale Enactment must mean an originating summons: see definition of Originating Summons in section 2 of the Civil Procedure Code. And it follows that the Court of a Magistrate has no jurisdiction to entertain any application under that section 11 (b) of the Enactment, since no Originating Summons can issue out of the Court of any Magistrate. This appeal must therefore be allowed and with costs.

Appeal allowed with costs.

[APPELLATE CIVIL JURISDICTION]

PEDLOW, J.

November, 1, 1937.

INDUN BINTI MAT ZIN....Applicant-Appellant

v.

1. **HAJI ISMAIL BIN MUSA**
2. **ABDULLAH BIN SUHOR**
3. **MIDUT BINTE HAJI BALI**
4. **MOHAMED NOOR**

....**Objector-Respondents**

[NEGRI SEMBILAN CIVIL APPEAL No. 5 of 1937]

Non-customary land—Distribution—Custom and Muhammadan Law.

The only land which can now descend according to "custom" is "customary land" coming within the Customary Tenure Enactment (Cap. 215). As regards Malays

the Muhammadan law governs the distribution of non-customary land.

The parties appeared in person. The words "Customary Land" were not recorded on the entry in the mukim register which referred to the land of the deceased and the land had never been held under old title and confined to any particular tribe subject to the adat.

PEDLOW, J.—This is an appeal against the decision of the Collector at Rembau as to the distribution under Chapter XIX of the Probate and Administration Enactment of the estate of Imah binti Datoh Mentri Jahia, of Chengkau.

The estate consisted of one piece of land only, viz., that comprised in E.M.R. 323, lot No. 872, Chengkau.

The deceased left two sons, one daughter, a husband and a mother. The latter renounced her rights in favour of the children.

The land was not customary land within the meaning of the Customary Tenure Enactment.

The Collector made an order for distribution giving the husband a share in the estate in accordance with the *Hukum Shara* or Muhammadan Law following section 184 (iii) of the Probate and Administration Enactment which states that the Collector shall "distribute the estate according to the law or custom having the force of law applicable to the deceased."

Against this decision the daughter Indun appealed on two grounds, viz.:

(1) that the value of the land was over $3,000 and therefore the Collector had no jurisdiction;

(2) that the parties were Rembau Malays of the Tanah Datar tribe, the land was in Rembau in the Tampin district and was *harta dapatan* (property acquired by the wife before her marriage) and therefore the husband was not entitled to any share.

A valuation of the land by the Collector at my request showed that it was worth $2,590 at date of distribution. Therefore ground (1) failed.

As to the second ground, it was argued that there can be three types of land, viz., customary, non-customary and (say) Rembau land.

I am unable to accept this proposition. The intention of the legislature in passing the Customary Tenure Enactment, as amended to date, seems to be that land shall be either customary or non-customary. In this connection see the definitions of "custom" and "customary land" in section 2 of that Enactment. The only land which can now descend according to "custom" is "customary land."

If the land is non-customary, as this is, I agree with Mudie, J., in *Kutai bin Haji Lateh and others* v. *Taensah binti Haji Enoh*, 3 M.L.J. 251 that in the case of Muhammadans, the *Hukum Shara* or Muhammadan Law governs the distribution.

The appeal therefore fails and the Collector's decision is confirmed. I make no order as to costs.

Appeal dismissed.

No order as to costs.

[APPELLATE CIVIL JURISDICTION]

PEDLOW, J.

October 27, 1937.

NG CHIN SIU.....Plaintiff

vs.

1. N.P.L.S.T. MUTHIAH CHETTY

2. AROKIAMARIAMMAL (f).....Defendants

[NEGRI SEMBILAN CIVIL SUIT No. 27 of 1937]

Interest of registered proprietor of land—Sale of land—Section 55 Land Code (Cap. 138)—Attachment before judgment.

The second defendant being the registered proprietor of an undivided half share in a piece of land executed a charge thereover. When the suit was instituted the first defendant and another were the registered chargees.

Default in payment having occurred the chargees obtained an order for sale of the land which was fixed for the 17th April, 1937.

On 28th March, 1937, the plaintiff entered into an agreement with the second defendant to purchase her share in the land.

On 30th March, 1937, the plaintiff executed a caveat prohibiting all dealings with the second defendant's share in the land.

On 31st March, 1937, the purchase price having been paid in full a transfer of the second defendant's share in the said land was executed in favour of the plaintiff's nominee and the caveat was registered.

On the 1st April, 1937, the second defendant paid into Court the amount mentioned as the reserve price to stop the sale.

On the 13th April, 1937, a discharge of the charge was executed.

Meanwhile the first defendant had instituted a suit against the second defendant to recover damages in place of interest unpaid on the charge and on the 3rd April 1937. he caused to be registered in the Land Office an attachment before judgment of the second defendant's share in the land.

The attachment before judgment was obtained *ex parte* and without notice to the second defendant.

Held: The fact that, at the time of the attachment, the second defendant no longer had any disposing power over the land does not prevent the land from being attached.

A caveat under the Land Code only affects the registered proprietor and is no bar to a judgment creditor.

An attachment before judgment obtained *ex parte* and without notice to the registered proprietor is bad and must be set aside.